

DAVIS *v.* SMITH.

Circuit Court, D. Massachusetts. March 18, 1884.

PATENTS FOR INVENTORS—EXPIRATION OF
PATENT—DEMURRER.

Demurrer to bill for profits and damages, filed against an infringer one day before the patent expired, sustained, and bill dismissed, with costs; following *Root v. Ry. Co.* 105 U. S. 189, and *Burdell v. Comstock*, 15 FED. REP. 395.

Demurrer to Bill.

Coburn & Thacher, for complainant.

Geo. L. Roberts & Bros., for defendant.

LOWELL, J. This bill, for profits and damages against an infringer of the plaintiff's patent, was filed one day before the patent expired. The defendant demurs for want of equity; and his demurrer must be sustained. No equitable discovery or relief is sought by the bill beyond or different from that which is usual in ordinary patent causes. The plaintiff could not expect the court to grant a restraining order, which must expire before it could, by reasonable diligence, be served, nor was one prayed for. An injunction was impossible for want of time to notify the defendant. The case, therefore, comes, within *Root v. Ry. Co.* 105 U. S. 189; *Burdell v. Comstock*, 15 FED. REP. 395; *Betts v. Qallais*, L. R. 10 Eq. 392.

Demurrer sustained. Bill dismissed, with costs.